



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 06356-98

25 May 2000

LCDR [REDACTED] USNR

Dear Commander [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command dated 30 March 1999, a copy of which is attached. The Board also considered your letters dated 23 March 1999 with enclosure, 11 June 1999 and 21 April 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Although mid-term counseling was required but not performed in your case, the Board was unable to find you received no counseling concerning perceived deficiencies. In this regard, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. They found your Navy and Marine Corps Achievement Medal, which covered the entire period October 1996 to September 1998, did not invalidate the contested fitness reports, nor did it directly contradict the report for 1 October 1997 to 31 March 1998. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this

regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY

**NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000**

6356-98

1610
NPC-311
30 March 1999

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS**

Via: NPC/BCNR Coordinator (NPC-00XCB)

Subj: LCE [REDACTED] US [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness reports for the periods 1 October 1996 to 30 September 1997 and 1 October 1997 to 31 March 1998.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the fitness report for the period 1 October 1996 to 30 September 1997 to be on file. The fitness report for the period 1 October 1997 to 31 March 1998 is not on file; however, the member provided a copy with his petition. The fitness report is currently being placed in the member's digitized record. The member signed the reports acknowledging the contents of the reports and his rights to submit a statement. The member did not desire to make a statement. In accordance with reference (a), Annex S, Paragraph S-8, the member has two years from the ending date of the report to submit a statement.

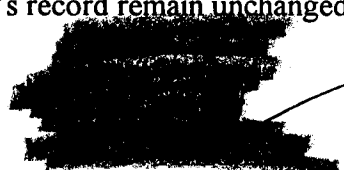
b. Counseling on performance is mandatory in accordance with Annex C of reference (a). A review of the member's reports revealed an erroneous entry in blocks-30. The entry for the fitness reports in question indicates counseling was not required; however, in June 1995 guidance was implemented and introduction of the new fitness report/evaluation form and how counseling should occur. For Lieutenant Commanders, (inactive) mid-term counseling was to occur during March. Because the entries in blocks-30 are in error, we are administratively correcting the entry by filing a memorandum in the member's headquarters record. The reports are valid.

c. Although the fitness report for the period 1 October 1997 to 31 March 1998 show a decline in performance the reporting senior is charged with commenting on the performance or characteristics of an officer under his/her command and determines what material will be included in a fitness report. The reporting senior clearly explains in the comment section of the fitness report, his reason for writing the report as he did.

d. The member states he was prevented from initiating redress because the fitness report was mailed to him and with the decommissioning of Mine Search Squadron. In accordance with reference (a), Annex S, paragraph S-11.b, complaints involving fitness reports must be submitted within ninety days from the time the member knows of the report's submission, or within one year after it is submitted, whichever is earlier.

e. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

A large, dark, irregularly shaped redacted area, likely covering a signature or name. A thin, curved line extends from the right side of the redaction towards the right margin.

Head, Performance
Evaluation Branch